HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 913 (M/S) of 2004

Inter College Thauldhar Majaf
Oan Tehri Garhwal though its Manager
Vs
Regional Joint Director, Education
Garhwal Region Pauli & others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 25. 9.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 913 (M/S) OF 2004

Inter College Thauldhar Majaf Oan Tehri Garhwal through its Manager Sri Shanti Swaroop Mahar ……. Petitioner

Versus

Regional Joint Director, Education Garhwal Region Pauli & Others. …….Respondents

Sri Gopal Narain counsel for the petitioner
Sri Nand Prasad, counsel for the Resp. No. 1 & 2.

HON'BLE RAJESH TANDON J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 21.09.2004.

Briefly stated, the petitioner is a recognized aided college and is governed by the U.P. Intermediate Education Act, 1921. The college of the petitioner has been upgraded from the junior High School to the Intermediate College and was running for more than 40 years. Counsel for the petitioner has submitted that in the month of June, 2004 some persons those who are not the member of the General Bodey or in the management have made agitation for provincialisation of the college by making pressure on the management and government through hunger strike and a letter was sent by the S.D.M. for negotiation and the assurance was given that the proposal will be placed before the General Body.

The counsel for the petitioner has submitted that on 28.08.2004 they have taken the decision that they are not in favour of the provincialisation of the college but the persons interested are making pressure on the management. However, it was submitted that after the election of the new management committee they will take the decision.

Sri Gopal Narain counsel for the petitioner has submitted that the impugned order dated 21.09.2004 has been passed under section 16-A and 16-B of U.P. Intermediate Education Act, 1921 by which the authorized controller has been appointed as a result of the agitation and in fact the order in question has been passed without giving an opportunity to the petitioner as well as

show cause notice to the petitioner before passing the impugned order.

Counsel for the petitioner has referred Section 16D of the Intermediate Education Act, 1921 provides that the Director may cause a recognized institution to be inspected from time to time. Sub clause (iii) provides that on the receipt of the information if the Director is satisfied that the committee of management has failed to comply the judgment of any court etc.etc. he may refer the case to the Board of such institution or issue notice to the committee of management to show cause within 30 days from the date of receipt of such notice as to why an order under sub section (4) should not be made. Sub clause (iii) reads as under:

"If on the receipt of information or otherwise, the Director is satisfied that –

(i) *the Committee of Management of an institution has failed to comply with the judgment of any court or any direction made under this Act or any order law for the time being in force; or*

(ii) *the Committee has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of academic standard in the institution or has appointed or retained in service any teaching or non-teaching staff in contravention of the provisions of this Act or the Regulations; or*

(iii) *any dispute with respect to the right claimed by different persons to be lawful office-bearers of the Committee of management has affected the smooth and orderly administration of the institution concerned; or*

(iv) *the Committee has persistently failed to provide the institution with such adequate and proper accommodation, library, furniture, stationery, laboratory equipment or other facilities as are*

necessary for the efficient administration of such institution; or

(v) the Committee has substantially diverted, misapplied or misappropriated the property of the institution to its deteriment or has transferred any property in contravention of the provisions of the Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 (U.P. Act No.3 of 1975);

(vi) the draft of the Scheme of Administration has not been submitted with the time allowed therefore under Section 16-B, or that the Management of the institution is being conducted otherwise than in accordance with the Scheme of the administration or the affairs of the institution are being otherwise mis-managed;

(vii) the scheme of Administration in relation to an institution, approved before the commencement of the Intermediate Education (Amendment0 Act, 1980, is inconsistent with the provisions of this Act and the management of the institution has failed to alter or modify it within a reasonable time despite notice under Section 16-CCC."

Sub section (4) of Section 16-D provides that where the committee of management of institution fails to show cause within the time allowed under sub section (3) or within such extended time as the Director may from time to time allow after considering the show cause notice he may appoint an authorized controller for the institution. Sub Section (4) reads as under:

"Where the committee of Management of an institution fails to show cause within the time allowed under sub-section (3) or within such extended time as the Director may from time to time allow, or where the Director is, after considering the cause shown by the Committee of Management, satisfied that any of the ground mentioned in sub section (3) exists, he may, recommend to the State Government to appoint an Authorised Controller for that institution, and thereupon, the sState

Government may, by order, for reasons to be recorded, authorize any person (hereinafter referred to as the Authorised Controller) to take over, for such period not exceeding two years, as may be specified, thde Management of such institution and its properties.

Provided that if the State Government is of opinion that it is expedient so to do in order to continue to secure the proper management of the institution and its properties, it may, from time to time, extent the operation of the order, for such period, not exceeding one year at a time, as it may specify, so however, that the total period of operation of the order, including the period specified in the initial order, but excluding the period specified in sub section (8), does not exceed five years;

Provided further that if at the expiration of the said period of five years, there in no lawfully constitution committee of Management of the institution, the Authorised Controller shall continue to function as such, until the State Government is satisfied that a Committee of Management has been lawfully constituted".

Sub section (5) of Section 16D further provides the circumstances under clause (iii) or clause (v) of sub section (3) of Section 16D for the appointment of the authorized controller may be appointed. As stated above clause (iii) or clause (v) of sub section (3) of Section 16D of the Act relates to the dispute between the office bearers of the committee, sub clause (v) provides the misappropriation of the property of the institution.

A perusal of the order passed by the Joint Director of Education dated 21.09.2004 shows that on bdeing information received on 20.09.2004 regarding the hunger strike and the order was passed on 21.09.2004 to the following effect:

"i;c/;k lpkyd fu;qDr vkn'ks'k] fty f'k{kk vf/kdkjh fVgjh x<oky dk i=kd@ ekf/;fed 16983&85@ 2004&2005 fnukd 28-09-2004 dk vuqlkj b.Vj dkyst ektQ vk/kfv0x0 dh i;c/;k lfefr dk mij vkjksiksa dk lki{k ,oa {k=h; turk }kjk vkej.k vu'ku ij cSBus ,oa i;c/;k lfefr }kjk iznÙk; dj.k dk iLrko dk fo:) dk;;okgh fd;s tkus dh QyLo:Ik fty f'k{kk vf/kdkjh dh vk[;k ij b.VjehfM,V ,DV 1921 dh /kkjk 16¼d½ /kkjk 16¼2½

,o oru forj.k dh /kkjk ¼vf/kfu;e½ 5]6 rFkk f'k{kk fun'kd m0i0 lkekU; ¼1½ vuHkkx f'k{kk fun'kky; m0i0 bykgkckn d i=kd @lk0¼1½@ 598&680 @ 96&97 fnukd 22-05-1996 d fun'kku lkj rRdky iHkko ls orZeku icU/k d vf/kdkjk dk vfrdze.k vfxe vkn'kk rd icU/k lpkyd d :i e Jh Jo.k dekj yky JhokLro rd dk fu;Dr fd;k tkrk g ¼tk orZeku e [k.M f'k{kk vf/kdkjh fodkl [k.M irki uxj fV0x) e dk;jr g½ icU/k lpkyd d gh d'r; gkxk tk ,d icU/k lfefr e fufgr gkr g"

Since the aforesaid power has been exercised under section 16D of the U.P. Intermediate Education Act as well as payment of Salary Act, the requirement of Section 16D has to be complied with before passing the order for appointment of the Authorised Controller.

Counsel for the petitioner has also referred (1995) 3 UPLBEC 1375 State of U.P. Vs Committee of Management of S.K.M. Inter College ands another. Paragraph 5 and 6 refers to the power of the Government on the receipt of the information by the Director and further where to committee of Management fails to show cause within the time allowed. The relevant portions of the above rulling are quoted below:

"Where the Committee of Management of the Institution fails to show cause within the time allowed under Section 3 of within such extended time as the Director may from time to time allowed or where the Director is after considering the cause shown by the Committee of Management, satisfied that any of the grounds mentioned i.e. sub-section (3) exits, he may, recommend to the State Government to appoint an Authorised Controller for that institution, and thereupon, the State Government may, by order for reasons to be recorded, authorize any person (hereinafter referred to as the Authorised (Controller) to take over, for such period not exceeding two years, as may be specified, the Management of such institution and its properties. Under sub-section (8), the State Government is of opinion it may suspend the Management of the Institution. Under Explanation I, for removing doubts in that behalf, the statute declared that in computing the period of time specified in

sub-section (4) or sub-section (6), the time during which the operation of the order was suspended by the High Court in exercise of the powers under Article 226 of the Constitution shall be excluded.

Thus if could be seen that the Directors is required to satisfy himself tht if the Committee commits any of the misfeasance of malfeasance enumerated in sub-section (3) of Section 16-D, the Director is empowered to issue show cause notice and on consideration of the material, together with any reply to the show cause notice if the Director satisfied that the Management of the Institution requires to be taken over and needs an appointment of an Authorised Controller, he is required to refer the matter to the Government. The Government has to consider the matter and for reasons recorded for its satisfaction in the behalf is empowered to authorize an officer called Authorised Controller to take over the management of his college. The maximum period during which Authorised Controller is empowered to manage the Institution is five years. The period during which the order of take over is suspended by the High Court is to be excluded in commutation of the maximum period of five years. Admittedly, in this case, period of five years has not been expired because of the suspension of the operation of the order right from its inspection by the High Court.

The question is whether clauses (v) and (vi) to sub-section (3) of Section 16-D have been satisfied on the facts of the case. We have seen that the Director had issued show cause notice on seven charges for diverse reasons stated in the reports submitted by the Auditors-one departmental and another of the Government Audit Department. The explanation given by the respondents was found to be not satisfactory. He submitted the report to the Government who on consideration of the facts emerged from the record and for special and exceptional reasons enumerated in the order, appointed the Authorised Controller to take over the Institution."

In view of the aforesaid facts and circumstances, since the order in question has been issued without issuing any show

cause notice to the petitioner and further without any recommendation to the State Government for the appointment of the Authorised Controller under section 16D of the Act the matter is remditted back to the Joint Director of Education who shall pass the appropriate orders in accordance with sub clause (3) of Section 16D of U.P. Intermediate Education Act within a period of three weeks. The order passed on 21.09.2004 shall remain in abeyance till 5th of November, 2004. By that time the Regional Joint Director Education shall take steps in accordance with sub clause (3) of Section 16D.

Subject to the aforesaid observations, the writ petition is finally disposed of in limine. No order as to costs.

Dated: 25.09.2004. **(Rajesh Tandon J)**

S.S.Negi.